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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,956	12/10/2001	David A. Tirrell	CITI530-1	2956
7590	02/13/2006		EXAMINER	
Lisa A. Haile, J.D., Ph.D. GRAY CARY WARE & FREIDENRICH LLP Suite 1100 4365 Executive Drive San Diego, CA 92121-2133			ROOKE, AGNES BEATA	
		ART UNIT	PAPER NUMBER	
		1653		
DATE MAILED: 02/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/015,956	TIRRELL, DAVID A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Agnes B. Rooke	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3, 17, 18, 56 and 57 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 4, 5, 17, 18 and 57 is/are rejected.
- 7) Claim(s) 2, 3, 56 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

This final action is in response to the Applicant's reply filed on 11/04/2005.

The amendments to the claims filed on 11/04/2005 have been acknowledged.

Claims 1-5, 17, 18, 56, and 57 are pending and currently under examination. Claims 6-16 and 19-55 are cancelled. New claim 57 has been added.

This application claims priority to 60/254,516 filed on 12/08/2000.

All Objections and Rejections not mentioned in this office action have been removed.

### New Rejections

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 4, 5, 17, 18, and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 57 use the term "attached" where referring to a polyanionic domain attached to the subject protein. This term is indefinite because it is not certain how the domain is attached to the subject protein, and via what chemical linkage does the attachment occur.

Claims 1, 4, and 57 are rejected because the Applicant uses the term "about" when referring to the number of residues of amino acid in the peptide chain. The term

"about" is indefinite because it does not provide any specific structure of peptide and it leaves the claims ambiguous, since the peptide length and amino acids sequence is not certain.

Claim 5 is rejected because the "aspartic acid residues" lack antecedent basis to claim 1.

Claims 17 and 18 are improper because they depend from cancelled claim 9.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 57 are rejected under 35 U.S.C. 102(e) as being anticipated by Petka et al. (U.S. 6,090,911).

For example, in Claim 1, drawn to a fusion protein, the polyanionic domain is comprised of **(Ala Gly)<sub>0-8</sub> – (Glu Gly)<sub>1-40</sub>**.

In Claim 57, drawn to a fusion protein, the polyanionic domain comprised of:

**(Ala-Gly)<sub>0-8</sub> – (Pro Asp Gly)<sub>1-40</sub>**

or

**(Ala-Gly)<sub>0-8</sub> – (Asp-Gly)<sub>1-40</sub>**.

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Petka et al's SEQ ID NO: 24 (1-28) has the following sequence, depicted with the instant sequences set forth below:

5		10	
Ala Any Any Ala Asp	Any Asp Ala Any Any		
Gly	Gly Glu	Glu Gly	
Pro	Pro	Pro	
<b>Ala Gly Ala Gly Glu</b>		<b>Gly Glu Gly Glu Gly</b>	
<i>Pro Asp Gly Pro Asp</i>		<i>Gly</i>	
<b>Ala Gly Ala Gly Asp</b>		<b>Gly Asp Gly Asp Gly</b>	
15		20	
Ala Asp Any Asp Ala	Any Any Ala Asp Any		
Gly Glu	Glu Gly	Gly Glu	
Pro	Pro	Pro	
25		28	
Asp Ala Any Any Ala	Asp Any Asp		
Glu Gly	Glu	Glu	
Pro	Pro	Pro	

The instant sequence can be found throughout Petka et al.'s SEQ ID NO: 24, as exemplified above. Therefore, a fusion protein comprising in a terminal region a polyanionic domain depicted as amino acid sequences **(Ala Gly)<sub>0-8</sub> – (Glu Gly)<sub>1-40</sub>, (Ala-Gly)<sub>0-8</sub> – (Pro Asp Gly)<sub>1-40</sub>, or (Ala-Gly)<sub>0-8</sub> – (Asp-Gly)<sub>1-40</sub>** is anticipated by Petka et al.

#### ***Objections to claims***

Claims 2, 3, and 56 are objected to because they depend from rejected base claim 1.

***Conclusion***

The sequence -SEQ ID NO:1- SEQ ID NO:2- as depicted in claim 1 is novel and thus free of art.

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-2055. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-273-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

*AR*  
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*Karen Cochrane Carlson R.D.*

KAREN COCHRANE CARLSON, PH.D  
PRIMARY EXAMINER